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IN THE

Supreme Court of the United States

October Term, 1936.

No. 138

KENTUCKY WHIP AND COLLAR COMPANY,

Petitioner,

vs.

ILLINOIS CENTRAL RAILROAD COMPANY,

Respondent.

BRIEF OF STATE OF MINNESOTA, AMICUS CURIAE.

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MOTION FOR LEAVE TO FILE.

Now comes the State of Minnesota, appearing by its Attorney General, Harry H. Peterson, and moves this Honorable Court for permission to file a brief, amicus curiae, in support of the position of the Respondent, the Illinois Central Railroad Company, in the above entitled appeal, before this Court.

HARRY H. PETERSON,
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102 State Capitol,
St. Paul, Minn.

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BRIEF OF STATE OF MINNESOTA, AMICUS CURIAE.

INTRODUCTION.

The State of Minnesota is interested in the determination of this case, because affirmance of the judgment below will be in aid of the enforcement of the Laws of Minnesota regulating traffic in prison made goods. These laws are Laws of Minnesota, 1935, Chapter 267, which provides that prison made goods shall be subject to the laws of the State of Minnesota immediately upon arrival therein and shall not be exempt from such laws by reason of being introduced in the original package or otherwise; and Laws of Minnesota, 1935, Chapter 268, which

requires all prison made goods offered for sale within the State to be branded and marked as such and providing penaltes for sales in violation thereof. These laws are printed in full in the appendix.

The enforcement of the Ashurst-Sumners Act of Congress of July 24, 1935, 49 Stat. 494, 49 U. S. C. A. §§ 61, 64, will aid substantially in the enforcement of the laws of Minnesota requiring convict made goods to be plainly labeled as such stating the prison of origin for the reason that all convict made goods sold in Minnesota, except the products of the State Prison of Minnesota, are shipped in from other States. Much of such goods are so shipped into Minnesota from other States in successful evasion of the laws of Minnesota. In every instance, it is difficult to ascertain that such goods are convict made, their origin and to obtain evidence and witnesses available for prosecutions in the State courts. Interested witnesses will not come into the jurisdiction of Minnesota from the States in which the prisons are located, in which the prison made goods are made, voluntarily to testify. Federal law enforcement agencies have the power and personnel necessary to deal adequately with this problem in the respects in which State power is inadequate or wanting. The situation is not unlike that which induced Congress first to pass the Wilson Act and then the Webb-Kenyon Act with respect to intoxicating liquors.

ARGUMENT.

The Ashurst-Sumners Act contains two parts, viz;

(1) A provision that it shall be unlawful to transport, or cause to be transported, any goods, wares, or merchandise manufactured or produced by convicts or prisoners, with certain exceptions, from one State or territory to another State or territory in the United States, where such goods, wares or merchandise are intended by any person interested therein to be received, possessed, or sold, either in the original package or otherwise, in violation of any law of such State or territory; and

(2) A provision that all packages containing any such convict made goods shall be plainly and clearly marked so that the name and address of the shipper, the name and address of the consignee, the nature of the contents, and the name and location of the penal or reformatory institution where produced may be readily ascertained on an inspection of the outside of such package.

I.

THE PROVISIONS OF THE ASHURST-SUMNERS ACT PROHIBITING THE TRANSPORTATION IN INTERSTATE COMMERCE OF CONVICT MADE GOODS INTO ANY STATE IN VIOLATION OF ITS LAWS ARE A CONSTITUTIONAL EXERCISE OF THE POWER OF CONGRESS TO REGULATE COMMERCE AMONG THE STATES BY PREVENTING THE USE OF THE FACILITIES OF INTERSTATE COMMERCE TO CAUSE EVIL BY TRAFFIC IN CONVICT MADE GOODS.

Traffic in convict made goods in competition with goods made by free labor is an evil which the States may suppress by the exercise of their police power.

Whitfield v. Ohio, 297 U. S. 431, 439-40.

The evil of traffic in convict made goods is recognized by this Court to be of such a grave character as to make applicable thereto the rules applied to traffic in intoxicating liquors and by the application of these rules to uphold the power of Congress by the Hawes-Cooper Act to remove the impediment to State control presented by the unbroken-package doctrine to interstate shipments.

Whitfield v. Ohio, supra, page 440.

The Ashurst-Sumners Act bears the same relation to traffic in convict made goods that the Webb-Kenyon Act bears to traffic in intoxicating liquors. The Wilson Act relating to intoxicating liquors and the Hawes-Cooper Act relating to convict made goods are almost identical in language and have for their purpose the making of State laws regulating the respective traffics more effective by removing the impediments of the unbroken-package doctrine, which gave to such shipments the protection of interstate commerce law, which resulted in freedom from State action. Just as the ineffectiveness of the Wilson Act made it necessary to pass the Webb-Kenyon Act to preserve to the States their freedom to establish and enforce their own laws with respect to traffic in intoxicating liquors, it also became necessary to enact the Ashurst-Sumners Act with respect to convict made goods. In each case the shipment of goods into a State to be received, sold or used in violation of its laws is prohibited by the Federal law.

This Court has already held that traffic in convict made goods is an evil subject to State and Federal regulation. It has held that the traffic may be entirely prohibited by the States and that Federal legislation depriving such goods upon arrival in a State of the protection of the interstate commerce law is a proper regulation of such commere by Congress. The

rules applicable to convict made goods were said by this Court to be "akin" to those which govern intoxicating liquors. In Whitfield v. Ohio, supra, at page 440, this Court said:

> "If the power of Congress to remove the impediment to state control presented by the unbroken-package doctrine be limited in any way (a question which we do not now find it necessary to consider), it is clear that the removal of that impediment in the case of prison-made goods must be upheld for reasons akin to those which moved this court to sustain the validity of the Wilson Act."

If the traffic in convict made goods is an evil, the manner and extent of the regulation of such traffic is for the Congress to decide. It may prohibit shipments in interstate commerce into a State of convict made goods upon the same principle that it may prohibit the shipment of intoxicating liquors into a State in violation of its laws. Such laws are sustained as regulations of interstate commerce. The principles governing this case were announced by this Court in the case of Clark Distilling Company v. Western Maryland Railway Company, 242 U. S. 311, in which this Court sustained the constitutionality of the Webb-Kenyon Act. The Court pointed out in the opinion that intoxicating liquors are a proper subject of regulation. We have already pointed out that this Court has held that prison made goods are also a subject of regulation in the case of Whitfield v. Ohio, supra. Then the Court pointed out at page 325-326 that the regulation may take the form of an absolute prohibition of traffic there in interestate commerce. The Court then pointed out that inasmuch as Congress has the power to prohibit the movement of intoxicants in interstate commerce, it cannot be held that it exceeded its authority by regulating the traffic to the extent of permitting the prohibitions of one State to prevent the use of interstate commerce to ship liquor from another State. p. 327. Analogy, if Congress

has the power to prohibit traffic in convict made goods, it can regulate that traffic in such a manner as to permit the prohibitions of one State to prevent the use of interestate commerce to ship convict made goods from another State. The Court pointed out that the regulations of the Webb-Kenyon Act produce cooperation between the local and national governments so as to preserve the right of each. pp. 331-332. This is precisely what the Ashurst-Sumners Act does with respect to convict made goods.

It is no answer to the arguments which have been advanced that convict made goods are harmless in themselves and that, therefore, the regulations of the Ashurst-Sumners Act exceed the power of Congress to regulate interstate commerce. Congress may adopt regulations of interstate commerce in the nature of police regulations.

In Hoke v. United States, 227 U. S. 308, in which this Court upheld the White Slave Traffic Act of 1910, it was held that the means adopted to regulate interstate commerce "may have the quality of police regulations." p. 323.

In Brooks v. United States, 267 U. S. 432, the Dyer Act prohibiting the interstate transportation of stolen motor vehicles was upheld. In that case Chief Justice Taft, speaking for the Court, said:

> "The objection to the Act cannot be sustained. Congress can certainly regulate interstate commerce to the extent of forbidding and punishing the use of such commerce as an agency to promote immorality, dishonesty or the spread of any evil or harm to the people of other States from the State of origin. In doing this it is merely exercising the police power, for the benefit of the public, within the field of interstate commerce."

The transportation of the women in the White Slave Case, Hoke v. United States, supra, and the transportation of the stolen automobile in the Brooks case, supra, were not in and of themselves harmful. It was the traffic in the transportation of women for immoral purposes and debauchery and the traffic in stolen automobiles by nation-wide rings of criminals and the use of the facilities of interstate commerce to facilitate such immoral, harmful and illegal traffic in each of the cases mentioned which justified Congress in exerting its power to police interstate commerce and prevent its facilities from being used for such purposes. The same argument applies to the use of the facilities of interstate commerce to promote and carry on business in convict made goods. Even though the goods themselves be harmless and innocuous, nevertheless, traffic in such goods is an evil and is ruinous to free labor and a fraud upon the public. The Congress is justified in using its power to prevent the facilities of interstate commerce from being used to carry on the evil traffic in convict made goods for the same reasons that it is justified in preventing an evil traffic in transporting women and stolen automobiles.

It is upon these grounds that interstate traffic in adulterated and misbranded foods may be prohibited by Act of Congress, Hipolite Egg Company v. United States, 220 U. S. 45, and that interstate and foreign commerce in fight films may be suppressed by Act of Congress, Freed v. United States, 239 U. S. 325.

In the Lottery Case, 188 U. S. 321, it was held that Congress may prohibit under its power to regulate commerce among the States the interstate transportation of lottery tickets. It was pointed out in that case that lottery tickets in and of themselves are not harmful but that they are the means by which a harmful traffic may be carried on. In that case it was held that Congress in regulating interstate commerce

may "provide that such commerce shall not be polluted by the carrying of lottery tickets from one State to another." p. 356. It was further held that such legislation only supplemented the laws of the States. p. 357.

II.

THE PROVISIONS OF THE ASHURST-SUMNERS ACT REQUIRING THAT CONVICT MADE GOODS TRANSPORTED IN INTERSTATE COMMERCE BE PLAINLY LABELED ARE A CONSTITUTIONAL EXERCISE OF THE POWER OF CONGRESS TO REGULATE COMMERCE AMONG THE STATES BY PREVENTING THE USE OF THE FACILITIES OF INTERSTATE COMMERCE TO CAUSE EVIL BY TRAFFIC IN CONVICT MADE GOODS.

The power of Congress to adopt police regulations within the scope of its power to regulate interstate commerce includes the power to require that goods be labeled so as to prevent deceit and fraud being perpetrated upon the public as a result of such commerce.

Hipolite Egg Company v. United States, 220 U. S. 45, supra.

Traffic in convict or prison made goods is attended with fraud, deception and unfair trade practices. These consist in many instances of labels upon said products which would lead the purchaser to believe that the same were manufactured in a factory by a regular manufacturer employing free labor. We feel confident in the assertion that, in the absence of legislation requiring it, such goods never bear a label showing that they are made in a prison or by convict labor. As a matter of fact the contracts of the contractors with the prison authorities for such products generally contain a clause that the contractor

shall have a right to rescind the contract if Federal or State legislation shall be enacted requiring a label to show the origin of such goods or that they are made by convict labor. Such a contract is printed in full in the case of Rice v. State, 108 Okla. 4, 232 Pac. 807. That contract was one between the Cherokee Manufacturing Company and the State of Oklahoma by which the State agreed to manufacture certain shirts and garments for the company. In the contract it is provided that labels shall be attached and that the cloth and all other goods used in the manufacture of the garments shall be subject to the approval of the company. These goods are then sold by the company as its product. To protect itself against such legislation Section 8 of the Contract, which is printed in the opinion, provides that the company shall have a right to cancel the contract if Federal or other legislation shall require it to label its goods so as to show that they were made in a prison. These goods are marketed not as prison made goods, but as the goods of a manufacturer.

That this is an unfair trade practice and a deception and fraud upon the public is established by all the decisions. In short the contracts entered into between prison contractors and the prison authorities disclose a purpose to perpetrate frauds and deception upon the public as to the origin of such goods and the labor by which they are produced and reserve a right to the contractor to rescind such contracts when that purpose to deceive and defraud cannot be exercised by reason of the enactment of State and Federal laws which prevent such fraud and deception.

The trial judge in this case, Judge Hamilton, in his written opinion, gave expression to this thought in the following language:

"It has been the practice in some instances of persons dealing in convict made goods to represent that the manufacturing was done in free institutions and by skilled labor. The Federal Trade Commission has found this to be an unfair trade practice. See the proceedings of that body in the matter of Commonwealth Manufacturing Company and Harry Dushoff, doing business under the trade names and styles of Harry Dushoff & Company, and Chicago manufacturing Company, Docket No. 1367.

"Usually the place of manufacture of an article is disclosed as a matter of advertising and good will, and so far as I know no producer of a product in general use and sale has sought to conceal the place of production. The fact that the plaintiff in the case at bar contends that his business would be destroyed if required to label his product is strongly persuasive that the buying public attaches great importance to the place of manufacture, and a regulation requiring labeling is not in conflict with the Constitution.

"The framers of the Constitution never intended that the power lodged in the Congress to legislate should be subject to the control of the Judiciary if there was a basis for the Congressional action, no matter how slight in fact it might be. It is only necessary for me to decide in this case that there was a slight basis for the Act of Congress in requiring the labeling of the plaintiff's product when tendered for shipment in interstate commerce, and such a basis undoubtedly existed. Courts have many times sustained legislation essentially similar to the Act here in question."

A representation by one marketing goods that he is a manufacturer when he is not is a deception and fraud and unfair practice, which may be suppressed by the exercise of governmental power. It was held that Congress may suppress such practices in interstate commerce through the Federal Trade Commission by this Court in the case of Federal Trade Commission v. Royal Milling Company, 288 U. S. 212. In that

case the respondent marketed pancake and other flour which it purchased from other manufacturers. The article was put up and sold by the defendant as its product under the name of the Royal Milling Company. It was held that the use of the words "milling company" and other words of like import would lead the purchaser to believe that he was purchasing a product of the respondent when in fact he was not and that thereby a deception was perpetrated and an unfair practice indulged in. In speaking of the practice of the defendant, this Court, at page 215, said:

> "Respondents have circulated written and printed circulars among the trade which either directly assert, or are calculated to convey the impression, that their product is composed of flour manufactured by themselves from the wheat."

Of the right of the public to know what it is purchasing, at page 216, the Court said:

> "If consumers or dealers prefer to purchase a given article because it was made by a particular manufacturer or class of manufacturers, they have a right to do so, and this right cannot be satisfied by imposing upon them an exactly similar article, or one equally as good, but having a different origin."

It held that the respondent's acts deceived the public and that the Federal Trade Commission was justified in making an order to desist from using the words "milling company" or other words of like import and at page 217 the Court further said:

> "The result of respondents' acts is that such purchasers are deceived into purchasing an article which they do not wish or intend to buy, and which they might or might not buy if correctly informed as to its origin. We are of the opinion that the purchasing public is entitled to

be protected against that species of deception, and that its interest in such protection is specific and substantial."

Not only are prison made goods sold under labels which do not disclose their origin and which deceive the public into believing that they are made in factories instead of prisons, but in many cases as the records of the Senate Committee disclose, such goods bear false labels and are dumped into the markets of the States to demoralize and ruin business. Rep. No. 344, U. S. Senate 70th Congress, 1st Session, Page 4. It is a well known fact, too, that these goods are dumped upon the markets by dealers at sales which are widely advertised, in which the dealers assert that they have purchased a large quantity or an entire output of such products. People are led to believe that the merchant has purchased the entire output of a manufacturer and that he is enabled to charge a low price for the goods because of the large purchase which he has made. The fact of the matter is that the merchant is enabled to charge a low price because the goods are prison or convict made and this fact is carefully concealed from the public.

The right of regulation exists even though no private rights are invaded. The public has rights in this respect which can be and are protected by legislation. In Federal Trade Commission v. Klesner, 280 U. S. 19, at page 27, this Court said:

> "But to justify the Commission in filing a complaint under §5, the purpose must be protection of the public. The protection thereby afforded to private persons is the incident. Public interest may exist although the practice deemed unfair does not violate any private right. In Federal Trade Commission v. Beech Nut Packing Co., 257 U. S. 441, a practice was suppressed as being against public policy, although no private right either of a trader or of a purchaser appears to have been invaded."

To the same effect is Federal Trade Commission v. Winsted Hosiery Co., 258 U. S. 483.

In Federal Trade Commission v. Algoma Lumber Co., 291 U. S. 67, it was held that the marketing of California Pine as White Pine is a deception and a fraud and unfair practice which the Federal Trade Commission was justified in suppressing. This decision emphasizes the right of the public to get what it chooses, even though the choice may be dictated by caprice or by fashion or even by ignorance. At page 78 this Court says:

> "Fair competition is not attained by balancing a gain in money against a misrepresentation of the thing supplied. The courts must set their faces against a conception of business standards so corrupting in its tendency. The consumer is prejudiced if upon giving an order for one thing, he is supplied with something else. Federal Trade Comm'n v. Royal Milling Co., 288 U. S. 212, 216; Carlsbad v. W. T. Thackeray & Co., (C. C.) 57 Fed. 18. In such matters, the public is entitled to get what it chooses, though the choice may be dictated by caprice or by fashion or perhaps by ignorance."

In Sears, Roebuck & Company v. Federal Trade Commission, (7th CCA) 258 Fed. 307, 6 A. L. R. 358, the petitioner was found guilty of having indulged in unfair trade practices which the Commission had suppressed. These consisted of representations of buying sugar, coffee and tea in large quantities from producers, even in foreign countries, and that by reason thereof petitioner was able to sell the same at a lower price than its competitors. The inference was that petitioner's competitors overcharged the public. It was held in that case that one may be found gulity of intentionally injuring and discrediting competitors by falsely leading the public to believe

that they were unfair dealers by falsely advertising that because of petitioner's handling commodities in large quantities and buying direct from manufacturers and producers his goods cost less and therefore could be sold for less. The order of the Federal Trade Commission that petitioner desist from such practice was sustained. The decision in this case denounces the practices, which attend the traffic in prison made goods—misrepresentations as to the origin of goods, which in the case at bar consists of representing the goods as being those of manufacturers instead of being prison made; that the price is low by reason of purchases by dealers of large quantities or entire outputs of factories instead of their being low on account of being prison made, and causing labels to be attached which are calculated to convey the impression that the goods are made by a manufacturer in a factory instead of in a prison by convicts. In short the practices of prison contractors and merchants, who dispose of prison made goods, are of such character as to justify the exertion of the police power to regulate and suppress them.

That the public has a right to be advised as to the goods which it purchases is well settled. Nobody has a right to represent his goods as the goods of somebody else. Nobody has a right to make any false, misleading or deceptive representations as to his goods. It is not necessary that an express representation be made. It is sufficient if the goods are marked in such a way as to result in the public's being deceived or misled.

In Charles Broadway Rouss, Inc., v. Winchester Co., 300 Fed. 706, at page 715, the Court says:

> "As Lord Halsbury said in Reddaway v. Banham (1896) A. C. 199, nobody has any right to represent his goods as the goods of somebody else. That principle of

law underlies all the decisions in the cases involving unfair competition."

In Elgin National Watch Co. v. Illinois Watch Case Co., 179 U. S. 665, 673, Chief Justice Fuller said:

> "In other words, the manufacturer of particular goods is entitled to the reputation they have acquired, and the public is entitled to the means of distinguishing between those, and other goods; and protection is accorded against unfair dealing, whether there be a technical trade mark or not. The essence of the wrong consists in the sale of the goods of one manufacturer or vendor for those of another."

In the case of Corn Products Refining Company v. Eddy, 249 U. S. 427, a statute of Kansas requiring that all syrup compounds be branded and labeled so as to show the ingredients thereof was held to be constitutional. At page 431 Justice Pitney said:

> "And it is too plain for argument that a manufacturer or vendor has no constitutional right to sell goods without giving to the purchaser fair information of what it is that is being sold.
>
> "Evidently the purpose of the requirement is to secure freedom from aduleration and misbranding; the mischief of misbranding being that purchasers may be misled with respect to the wholesomeness or food value of the compound. And it is too plain for argument that a manufacturer or vendor has no constitutional right to sell goods without giving to the purchaser fair information of what it is that is being sold. The right of a manufacturer to maintain secrecy as to his compounds and processes must be held subject to the right of the State, in the exercise of its police power and in promotion of fair dealing, to require that the nature of the product be fairly set forth."

Statutes of Iowa and Pennsylvania providing that manufacturers of ice cream shall state the butter-fat content thereof

were held to be constitutional in Hutchinson Ice Cream Company v. Iowa, 242 U. S. 153, in which this Court said:

> "Laws designed to prevent persons from being misled in respect to the weight, measurement, quality or ingredients of an article of general consumption are a common exercise of the police power."

A similar State statute of North Dakota requiring the labeling of lard so as to state the ingredients thereof and the sale of it in cans containing 1, 3 or 5 pounds or multiples thereof was held to be constitutional in Armour & Co. v. North Dakota, 240 U. S. 510.

In Heath & Milligan Manufacturing Company v. Worst, 207 U. S. 338, a statute of North Dakota requiring the labeling of paint containers and stating the ingredients of the paint was held to be constitutional.

In Savage v. Jones, 225 U. S. 501, a statute requiring the labeling of commercial feeding stuff, stating the ingredients thereof, was held to be constitutional.

In State v. Buck Merc. Company, 38 Wyo. 47, 57 A. L. R. 675, a statute was upheld which required the disclosure by label of materials or ingredients of certain articles sold and to specify the wool content thereof. Numerous other instances could be cited—

> Schmidinger v. Illinois, 226 U. S. 578 (weight of bread);
>
> Stolz v. Thompson, 44 Minn. 271, (contents of baking powder);
>
> State v. Aslesen, 50 Minn. 5; (contents of lard substitutes);
>
> State v. McKay, 137 Tenn. 280, Ann. cas. 1917 E. 158 (purity of seeds).

In Parrott & Company v. Benson, 114 Wash. 117, 194 Pac. 986, the Court said:

> "We cannot hold anything to be unjust discrimination or unreasonable restriction which requires merchandise to be sold for just what it is, and prevents its sale as something other than it is."

These authorities establish beyond any doubt that the business of dealing in prison or convict made goods is attended with evils that justify the exertion of the police power to suppress them and protect the public. Such a police power is comprehended within the power of Congress to regulate interstate commerce. The Ashurst-Sumners Act is such a police regulation and, therefore, is constitutional.

III.

THE ASHURST-SUMNERS ACT DOES NOT VIOLATE THE RIGHTS RESERVED TO THE STATES BY THE TENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

It is sometimes claimed in this respect that the Ashurst-Sumners Act violates the Tenth Amendment because it closes the doors of interstate commerce to goods which are in themselves harmless and thus imposes a State policy upon the States with respect to traffic in convict made goods. This argument is decisively answered by the Court below in the last two paragraphs of the opinion. In the second to the last paragraph of the opinion the Court below distinguished the Child Labor Cases and pointed out that this Court was of the opinion and held in those cases that the Child Labor Acts there held to be unconstitutional constituted attempts by Congress to impress its views of a desirable State public policy upon the States. It held that in the first Child Labor Cases under the

guise of regulating interstate commerce and in the second Child Labor Case under the guise of exerting the power of taxation, Congress had interfered with a purely internal affair of the States by enacting legislation fixing a minimum age at which children should be permitted to work. The Court below further pointed out that the Child Labor Cases are not in point because the Ashurst-Summers Act does not attempt to foist or impose a State policy on the States. The act in question is a regulation of commerce among the States, but it does not invade or interfere with the power of the States to regulate their own internal affairs. It was enacted in aid of the maintenance and enforcement of State laws as was the Webb-Kenyon Act. In this respect the Ashurst-Summers Act is like the Act of Congress upheld in the Lottery Case, 188 U. S. 321, 357.

CONCLUSION.

In conclusion, it is submitted that the Ashurst-Summers Act is similar to the Webb-Kenyon Act and is to be upheld for the same reasons. Each deals with a recognized evil resulting from traffic in a certain kind of goods. The States have denounced traffic in intoxicating liquors as an evil. This Court has sustained state legislation regulating and suppressing the traffic resulting in such evil. The States have denounced traffic in convict goods as an evil. This Court has sustained State legislation regulating and suppressing the traffic resulting in such evil. By sustaining the constitutionality of the Webb-Kenyon Act, this Court laid down the principle that Congress in the exercise of its power to regulate interstate commerce, may prohibit the use of the facilities of such commerce to carry on a traffic, which results in evil. It was held that the regulation may consist of a prohibition against shipment of goods productive of evil—intoxicating liquors—into a State to be

there received, kept, possessed or disposed of in violation of the laws of such State. The Ashurst-Sumners Act seeks to apply the principles of the Webb-Kenyon Act to traffic in convict made goods, which is productive of evil, by prescribing the same regulation of prohibiting shipment thereof in interstate commerce into a State there to be received, kept, possessed or disposed of in violation of its laws. The principles which sustains the Webb-Kenyon Act sustain the Ashurst-Sumners Act.

The provisions of the Ashurst-Sumners Act requiring convict made goods to be plainly labeled as such are valid regulations of interstate commerce for the reasons just stated and for the further reason that these provisions are a means of preventing fraud and deception arising from the traffic in such goods.

The Ashurst-Sumners Act does not contravene the Tenth Amendment because it does not seek to impose any State policy upon the States under the guise of an exercise of Federal power, but simply supplements the laws of the States and has for its purpose the making of State laws more effective. It is enacted in recognition of State laws and does not in any sense conflict with or supersede them. The States continue to prescribe their own regulations and, after the States have made their own regulations, the Ashurst-Sumners Act provides that those regulations shall be made effective by prohibiting the use of the facilities of interstate commerce so as to nullify them.

Respectfully submitted,

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APPENDIX

LAWS OF MINNESOTA, 1935.

CHAPTER—267 S. F. NO. 437

An act to subject all goods, wares and merchandise manufactured, produced, or mined, wholly or in part, by convicts or prisoners of other states to the laws of the State of Minnesota.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Prison made goods to be subject to laws of state.—That all goods, wares and merchandise manufactured, produced, or mined, wholly or in part by convicts or prisoners, (except convicts or prisoners on parole or probation,) or in any penal and or reformatory institutions transported into the State of Minnesota, and remaining therein for use, consumption, sale, or storage, shall upon arrival and delivery in the State of Minnesota, be subject to the operation and effect of the laws of the State of Minnesota, to the same extent and in the same manner as though such goods, wares, and merchandise had been manufactured, produced, or mined in the State of Minnesota, and shall not be exempt therefrom by reason of being introduced in the original package or otherwise.

Sec. 2. Effective September 1, 1935.—This act shall take effect and be in force from and after September 1, 1935.

Approved April 24, 1935.

LAWS OF MINNESOTA, 1935

CHAPTER 268—S. F. NO. 438.

An act to require the branding or marking of prison or convict made goods, wares and merchandise offered for sale

or intended for sale in this State, providing penalties for violation thereof, and to repeal Chapter 138, Laws of Minnesota for 1929.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Prison made goods must be marked.—That all goods, wares and merchandise manufactured, produced, or mined, wholly or in part, by convicts or prisoners, (except convicts or prisoners on parole or probation), or in any penal and/or reformatory institutions in this or any other state shall be branded, labeled or marked as hereinafter provided before being exposed for sale, and shall not be so exposed or sold without such brand, label or mark thereon.

Sec. 2. Must contain the words "Prison made."—The brand, label or mark required by Section 1 hereof shall contain at the head or top thereof the words "Prison Made" followed by the year and name of the penal and/or reformatory institution in which it was manufactured, produced, or mined in plain English lettering of the style known as great primer roman capitals. Such brand or mark, if the article will permit, shall be placed upon it and when such branding or marking is impossible, a label shall be used and attached. Such brand, mark or label shall be placed or attached outside of and on a conspicuous part of the finished article so as to be plainly visible to the purchasing public and also shall be placed outside of its box, crate or covering.

Sec. 3. Sale of unmarked goods forbidden.—That no person shall sell, offer for sale, or have in possession for the purpose of sale, goods, wares or merchandise described in Section 1 of this Act without the brand, label or mark required by this Act being placed thereon or attached thereto, or remove, conceal or deface such brand, label or mark.

Sec. 4. Violation a misdeameanor.—Any person who violates any of the provisions of this Act shall be guilty of a misdemeanor.

Sec. 5. Law repealed.—Chapter 138 of the Laws of Minnesota for 1929 is hereby repealed.

Sec. 6. Effective September 1, 1935.—This Act shall take effect and be in force from and after September 1, 1935. Approved April 24, 1935.